

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :ss.
COUNTY OF MARSHALL) FIFTH JUDICIAL CIRCUIT

* * * * *

JAMES F. MUNDT AKA
JAMES MUNDT,
Plaintiff,

vs.

GUARANTY NATIONAL INSURANCE
COMPANY, a corporation,
Defendant.

CIV. NO. 04-____

COMPLAINT

* * * * *

COMES NOW the Plaintiff in the above-entitled action, and for his cause of action against Defendant states and alleges as follows:

1. Plaintiff is a resident of Britton, Marshall County, State of South Dakota.
2. Defendant is a corporation licensed to sell insurance in the State of South Dakota with its home office located in Englewood, Colorado 80155.
3. Plaintiff was the owner of a 1995 Cadillac Eldorado VIN # 1G6ET1292SU621995.
4. Plaintiff purchased from Defendant an automobile insurance policy and was issued a policy (Policy No. 1561071-0) which was effective for a period of May 1, 2000 through November 1, 2000.
5. The policy described in paragraph 4 above issued by Defendant provided coverage for underinsured motorist in the maximum sum of \$100,000 as required by state law.
6. The policy of insurance issued by Defendant to Plaintiff and described in paragraphs 4 and 5 above specifically covered damages relating to personal injury suffered to Plaintiff.
7. That on July 13, 2000 Plaintiff received personal injury and incurred medical expenses as a result of an accident occurring near the intersection of 10th Street and Cliff Avenue in Sioux Falls, Minnehaha County, State of South Dakota.

8. That the accident and injuries suffered by Plaintiff described in Paragraph 7 above were the result of the negligence of the operator of the other motor vehicle; namely, Dawn Renae Schacherer.
9. That the insurer of the vehicle operated by Dawn Renae Schacherer has paid to Plaintiff the maximum benefits under the available and applicable policies in the sum of \$25,000, and Defendant and Plaintiff have released her from liability in exchange for the payment.
10. As a proximate result of the accident described herein Plaintiff has incurred special damages in the form of medical expenses in the total sum of \$33,115.99 which are itemized on Exhibit "A" attached hereto and by this reference made a part hereof as if fully set forth herein.
11. In addition, as a proximate result of the accident described herein Plaintiff will also incur further medical expenses related to treating the injuries sustained in the accident.
12. As a further proximate result of the accident Plaintiff has experienced pain and suffering and is entitled to compensation in an amount and to the extent to be established at trial.
13. As a further proximate result of the accident Plaintiff has sustained a permanent injury to his back and neck for which he is entitled to compensation in an amount and to an extent to be established at trial.
14. Defendant has refused to pay for the damages covered by its insurance policy although demands have been made by Plaintiff.
15. Defendant's refusal to pay for the covered losses is vexatious and in bad faith.

WHEREFORE, Plaintiff prays for Judgment against Defendant:

- (a) For his medical expenses incurred in the sum of \$33,115.99 plus further medical expenses;
- (b) Compensation for his pain and suffering and personal injury in an amount and to an extent to be established at trial;
- (c) For his costs and disbursements including reasonable attorney's fees;

- (d) For such other and further relief as the Court deems just and proper in the premises.

Dated this 10th day of November, 2004.

LAW OFFICE OF DANNY R. SMEINS, P.C.

By 

Danny R. Smeins
P.O. Box A
Britton, SD 57430
605-448-5964
Attorney for Plaintiff

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES

Exhibit "A"

MEDICAL EXPENSES

| | |
|---|---------------|
| Avera St. Luke's Hospital, Aberdeen, SD | \$20,168.28 |
| Heloise D. Westbrook, MD | 9,445.00 |
| Department of Veterans Affairs | 901.90 |
| Quarve Drug | 402.27 |
| Neurosurgical Associates of Aberdeen P.C. | 378.00 |
| Avera McKennan Hospital, Sioux Falls, SD | 501.20 |
| Marshall County Medical Clinic, Britton, SD | 96.64 |
| Radiology Services | 289.00 |
| Inphynet Primary Care (Radiology) | 598.70 |
| Dakota Imaging Prof. LLC | <u>335.00</u> |
| | \$33,115.99 |